

Appeal from decision of California State Office, Bureau of Land Management, declaring mining claims abandoned and void. CA MC 86289 through CA MC 86292.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, must file in the proper BLM office, within 90 days after the date of location of such claim, a copy of the official record of the notice or certificate of location. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the owner, and it is properly declared void.

APPEARANCES: Bruce C. Kempffer, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Bruce C. Kempffer has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated April 6, 1981, declaring the Momi Nos. 109 through 112, CA MC 86289 through CA MC 86292, abandoned and void for failure to file timely notices of location, pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR Subpart 3833.

Appellant's mining claims were located on December 23, 1980, for land situated in San Bernardino County, California. On April 1, 1981, BLM received copies of the official records of appellant's notices of location filed with the county recorder's office.

In his statement of reasons for appeal, appellant contends that, while the notices of location for his claims were recorded in the county recorder's office on March 4, 1981, they were not returned to him until March 30, 1981. On March 31, 1981, appellant states that he promptly mailed copies of the notices of location to BLM. Appellant submits a copy of what appears to be an envelope stamped by postage meter with a date of March 26, 1981, at San Bernardino, California, which purportedly contained the notices of location returned by the county recorder's office. Accordingly, appellant attributes any delay in the timely filing of copies of his notices of location to the county recorder's office.

[1] Section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the BLM office designated by the Secretary of the Interior within 90 days after the date of the location. See 43 CFR 3833.1-2(b). Section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), provides that failure to file timely such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner and renders the claim void. See 43 CFR 3833.4(a); Faith C. Hartman, 44 IBLA 310 (1979).

In the present case, the deadline for filing appellant's notices of location was March 23, 1981, 90 days after the date of location of the claims. However, the notices of location were not received and date stamped by BLM until April 1, 1981.

Appellant asserts that but for the delay by the county recorder's office in returning his notices of location he would have filed timely with BLM. Appellant, however, is mistaken in his underlying assumption, *i.e.*, that his notices of location had to be filed with the county before they would be accepted by BLM. The applicable regulation, 43 CFR 3833.0-5(i), requires only that the copy of the official record of the notice of location be a legible reproduction or duplicate of the document "which was or will be filed in the local jurisdiction where the claim * * * is located * * *." (Emphasis added.)

Despite appellant's asserted good faith efforts to comply with the filing requirements of FLPMA, the Board is without authority to excuse lack of compliance with the statute or to afford any relief from the statutory consequences. Albert Fouche, 58 IBLA 230 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); see Western Mining Council v. Watt, 643 F.2d 618, 628 (9th Cir. 1981). In the absence of evidence that appellant filed timely his notices of location, BLM properly declared appellant's mining claims abandoned and void.

As the BLM State Office has indicated, appellant may relocate these claims and file notice of this as provided in 43 CFR 3833.1, subject to any intervening rights of third parties, and assuming the land is open to mining claim location.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

